REMARKS

This paper is presented in response to the Office Action. By this paper, claims 66 and 69 are canceled, claims 67, 68 and 70 are amended, and new claims 72-80 are added. Claims 32-65 have been withdrawn by the Examiner as directed to an unelected invention. Claims 67-68 and 70-80 are now pending in view of the aforementioned cancellations, new claims, and withdrawals.

Reconsideration of the application is respectfully requested in view of the aforementioned amendments and new claims, and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicant notes that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Objection to the Specification

The Examiner has objected to the abstract. Applicant submits that in light of the amendment to the specification set forth herein, the objection has been overcome and should be withdrawn.

III. Objection to Claim 68

The Examiner has objected to claim 68 based on an informality. Applicant submits that in light of the amendment to claim 68 set forth herein, the objection has been overcome and should be withdrawn.

IV. Rejection of Claims 66-69 under 35 U.S.C. § 102

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP § 2131*

The Examiner has rejected claims 66 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,781,575 to Nilsson ("*Nilsson*"). Applicant disagrees with the contentions of the Examiner but submits that in light of the cancellation herein of claim 66, the rejection of that claim has been rendered moot and should accordingly be withdrawn.

The Examiner has rejected claims 67-69 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,493,577 to Choquette et al. ("*Choquette*"). Applicant disagrees with the contentions of the Examiner but submits that in light of the cancellation herein of claim 69, the rejection of that claim has been rendered moot and should accordingly be withdrawn. As to claims 67 and 68, Applicant respectfully disagrees and submits that for at least the reasons set forth below, the rejection has been overcome and should be withdrawn.

Independent claim 67 has been amended herein so that the recited optoelectronic device requires, among other things, "a substantially equipotential layer" and "an insulation layer ... situated between the second mirror and the substantially equipotential layer." Support for this amendment can be found, for example, at least at page 11, lines 15-20; page 12, lines 9-12; and Figure 1 of the application. In contrast, the Examiner has not established that *Choquette* teaches, or even suggests, such an arrangement.

Inasmuch as the Examiner has not established that the identical invention is shown in *Choquette* in as complete detail as is contained in amended claim 67, and because the Examiner has not shown that *Choquette* discloses the elements of claim 67 arranged as required by that claim, Applicant respectfully submits that the Examiner has not established that *Choquette* anticipates claim 67. For at least the foregoing reasons, Applicant respectfully submits that the rejection of claim 67, as well as the rejection of corresponding dependent claim 68, should be withdrawn.

V. Rejection of Claims 70 and 71 under 35 U.S.C. § 103

Applicant respectfully notes at the outset that in order to establish a *prima facie* case of obviousness, it is the burden of the Examiner to demonstrate that three criteria are met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP § 2143.*

The Examiner has rejected claims 70 and 71 under 35 U.S.C. § 103(a) as being unpatentable over *Choquette* in view of an article by Hegblom et al. (Electronics Letters, vol. 34 no. 9, April 1998) ("*Hegblom*"). The Examiner cites *Hegblom* for teaching "a similar VCSEL where the oxidized portion is tapered, therefore has a tapered tip, and is located at the standing wave null." Applicant respectfully traverses the rejections.

Claims 70 and 71 depend from claim 67, which, as mentioned previously, has been amended herein. By virtue of their dependence from independent claim 67, dependent claims 70 and 71 each require "a substantially equipotential layer" and "an insulation layer ... situated between the second mirror and the substantially equipotential layer." As discussed at **IV.** above however, the Examiner has not established that this limitation, in combination with the other limitations of the rejected claims, is taught or suggested by *Choquette* or any other reference(s). Thus, even if the *Choquette* device is modified by *Hegbloom* in the purportedly obvious fashion advanced by the Examiner, the resulting combinations fail to include all the limitations of the rejected claims. Applicant thus respectfully submits that the rejection of claims 70 and 71 should be withdrawn.

VI. New Claims 72-80

By this paper, Applicant has added new dependent claims 72 and 73. Inasmuch as claims 72 and 73 depend from claim 67, believed to be in allowable condition for at least the reasons set forth herein, Applicant respectfully submits that claims 72 and 73 are in allowable condition.

Applicant has also added new claims 74-80 herein. Applicant respectfully submits that, consistent with the discussion presented herein, new claims 74-80, each of which is directed to a combination that includes, among other things, "... an equipotential layer disposed upon the upper mirror portion; an insulating layer interposed between the upper mirror portion and the equipotential layer and adapted to form an aperture therebetween; and an upper contact portion disposed upon the equipotential layer outside the perimeter of the aperture" are patentably distinct from the devices purported by the Examiner to be disclosed in the references that the Examiner has cited. In this regard, Applicant

respectfully notes that reference to the aforementioned exemplary limitation is not intended, nor should it be construed, to be either an admission or assertion by the Applicant that patentability of Applicant's new claims, or any other claims, hinges on the presence of such limitation. Rather, Applicant submits that each of the now pending claims, considered in its respective entirety, patentably distinguishes over the reference cited by the Examiner.

VII. Corrected Docket Number

Applicant respectfully notes that the Office Action incorrectly references Attorney Docket No. "H26341-D2." Pursuant to the Change of Attorney Docket Number filed in this case on July 1, 2004, the correct docket number for this case is 15436.435.1.2. Applicant thus respectfully requests that all applicable USPTO records be updated accordingly, and Applicant further requests that all further communications from the USPTO reference docket number 15436.435.1.2.

CONCLUSION

In view of the remarks submitted herein, Applicant respectfully submits that each of the pending claims 67-68 and 70-80 is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 23RD day of January, 2006.

Respectfully submitted,

Peter F. Malen Jr.
Attorney for Applicants
Registration No. 45,576
Customer No. 022913
Telephone: (801) 533-9800